

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
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Broadcast Localism)	MM Docket #04-233
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Comments regarding Localism in Broadcasting in Proceeding MB 04-233

My name is Robert H. Branch, Jr. I am a national broadcast technical consultant with over 15 years of experience who has lived with intimate knowledge and experience with every phase of the FM translator industry, the full-service broadcast radio industry, and more recently, the LPFM industry, having recently assisted in the placement of three LPFM stations on the air. I currently consult for clients that are national FM translator network groups, regional FM translator network groups, full-service commercial radio groups, full-service non-commercial educational radio stations and groups as well as LPFM station owners. If I were to submit a narrative on behalf of any one of my clients, the political interests of any one of them would override some relevant core facts and, partially, the public interest in general. It is for this reason that I submit my own thoughts regarding the subject of localism in the context of current technology and regulation.

The FCC must weigh and balance many things in this proceeding with respect to broadcast radio. They are:

- 1. The public interest.**
- 2. The interests of the LPFM owners.**
- 3. The interests of FM translator owners.**
- 4. The interests of full-service television broadcast station owners.**
- 5. The interests of Class A and LPTV television owners.**
- 6. The interests of commercial full-service broadcasters.**
- 7. The interests of non-commercial full-service broadcasters.**
- 8. The interests of new entrants into broadcasting.**
- 9. The interests of the above industries becoming increasingly fragile in the face of increasing competition from other developing audio and visual media.**

Background

There are a few, little-known, but extremely relevant regulatory and industry facts that should be highlighted in this proceeding when deciding about LPFM and FM translator regulation with respect to localism.

- 1. FM translators are now allowed to carry only 30 seconds per hour of local programming and that only for public announcement and fund-raising purposes.** This limits the local public service that a translator is allowed to do and makes the lack of FM translator local service a REGULATORY one and not an OPERATIONAL one. One misnomer that is being propagated by the LPFM lobby is that FM translator owners don't WANT to serve the individual communities that the translator serves. I would encourage the commission to closely examine these claims in light of the facts and not the conjecture of a particular lobbying group or organization.
- 2. When the FCC adopted the LPFM regulations, instead of going the way of LPTV, where, the FCC allowed for a merger of television translator and LPTV regulation and, later provided for a Class A TV service, the FCC instead created a new set of regulations that are, arguably, contradictory of each other with respect to LPFM and FM translator technical standards and regulations.** There has been an abject failure of the FCC to recognize the technical similarity of these services. Many of these problems can be corrected in a engineering regulatory review. It is understood, in this context that the FCC and the media bureau staff had to weigh the interests of the new LPFM broadcasters with the sometimes troublesome process in which FM interference complaints are handled with secondary service stations. Currently there is no process for conversion of an FM translator to a LPFM station even if the licensee were to comply with all of the relevant ownership and technical regulations for an LPFM station.

3. **Since the Mitre Report, LPFM's now can locate a station inside of the third-adjacent channel of any full service FM station. However, the Mitre Report standards were not applied to FM translators, thus making a more stringent and unnecessary standard for FM translators with respect to third-adjacent channel locations than for proposed "protected" LPFM's.** At worst, this policy is technically irresponsible, and at best, it creates additional work for the FCC technical staff that could otherwise streamline the processing workload.
4. **Many of the groups that have translator networks actually have regional networks where the station staff can (and do) support the local interests of the individual communities where the FM translators are serving.** This includes traffic, weather, community events programming and special interest programming. It actually stands to reason that the interests of the population in an FM translator should be treated equally when a given regional FM translator may serve double the population as the full-service station that feeds it. This demands that the programming be in the public interest of the translator AND the full-service radio station. I consult several clients where this is the case.
5. **Most new LPFM owners have very few resources in which to serve their communities, especially in the first year of operation.** There is little incentive for the LPFM to ultimately invest in solid technology-based options since the attributable interest and renewal regulations are counter to this over the long term. The LPFM is pushed to operate as "cheaply" as possible since at the end of the license term, there is no reasonable assurance of continuance of operation, thereby making capital investment in localism mechanisms and technology obsolete. This

is clearly evidenced by the advertisements on the REC web site and others where advertisements abound for how to do LPFM for “very little investment” thus touting sub-standard technologies.

- 6. FM translators can have a part to play in matters of localism if they are only allowed.** FM translators could not exist without significant local support. Does this mean that the interests of the people already served by and listening to the existing FM translators overrides the interests of those who want to establish new service? The comments that have been and will be filed in this proceeding should be ample proof of this.
- 7. The original LPFM service was represented to the public as “secondary” from its inception.** To amend the service now would be disingenuous to the original spirit to which it was founded.
- 8. The spacing regulations for the original LPFM service were done on the basis that the service would be “secondary” and had specific interference conditions.** The technical regulations would have to be restudied and significantly amended to afford primary status to LPFM to avoid costly litigation.
- 9. The technical co-channel and first adjacent channel standards for LPFM were flawed from the beginning and do not adequately take into account or specifically protect the interests of the full-service broadcasters where the population of the full-service station extends outside of the “city-grade” f(50,50) 70 dBu contour, especially in the cases of areas prone to common atmospheric disturbances, such a temperature inversion.** Due to the antiquated nature of the f(50,50) and f(50,10) terrain roughness curves (developed

in the 1960's for a "new" FM service) it is difficult, if not impossible, to accept the f-curves to accurately predict AND PROTECT where a full-service station has established listeners. While newer and more accurate prediction methodology has been partially researched, it has been tabled in the past few years due to changes in the FCC OST office. This is counter to the localism of smaller full-service broadcasters who are the most prone to receive interference from an LPFM station.

- 10. For many NPR and other local and regional non-commercial educational radio outlets, FM translators provide an integral part of their overall regional expansion to serve the public.** Allowing LPFM stations to displace FM translators would undermine a valuable public service done by NPR and other conscientious and locally responsive broadcasters.
- 11. The radio industry commercial and non-commercial, in fact, has become a commodity to be traded and no longer a public trust.**
- 12. "Voice Tracking" has been apparently characterized by this localism inquiry as potentially detrimental, in itself.** It must be understood that "Voice Tracking" for most radio stations is an inherently local phenomenon. Most broadcast owners (especially non-commercial educational radio station owners) do not desire to have "voice tracks" recorded in one city to be aired in another. In fact, many voice tracking shifts are only done for time periods or "shifts" when there are fewer listeners to the station and they are still local. The entire industry should not be punished for the irresponsible, anti-local actions of a few larger, consolidated radio groups.

Suggestions for Enhancing Radio Localism

I propose a series of ideas that would allow and include some or all of the points listed below. Any or all of these would have a significant effect on the dynamic of broadcast radio localism.

- 1. If the FCC were to allow for LPFM displacement of FM translators then the commission should consider allowing a limited LPFM priority over those FM translators that are granted after a prescribed future date, say, January 2007. Since the vast majority of the past FM translators were already serving in the public interest, they would be “grandfathered” and immune from displacement.**
- 2. Having any LPFM priority only extend to satellite-fed networks where the originating station is over 300 km away.** This would preserve localism and regionalism without disadvantaging the expansion efforts of locally sensitive broadcasters. This would also allow existing groups to conform with a local or regional standard or be vulnerable to a replacement service.
- 3. Allow for FM translators to divest-and-convert their vulnerable translators to converted LPFM’s that would be willing to modify their applications to fully comply with new LPFM technical regulation and to allow the new LPFM station to transfer into the hands of a locally qualified LPFM applicant, subject to commission approval.** This would allow for local listeners that want the same style of programming currently

aired on an FM translator to assume ownership of the LPFM station thus programming the station already knowing the community needs. This would affect all networks Public, Christian & Community the same. If the LPFM lobbyists SAY that they want the public interest, would it not be prudent to allow the public to decide this on a case by case basis?

4. **Allow LPFM stations to own FM translators.** LPFM stations are already non-commercial. They are already allowed to originate programming for carriage by FM translators, only not to own them. This would allow for the larger translator groups to work with the LPFM lobby to serve particular communities with local content.
5. **For the existing non-commercial FM translators, allow for a limit of two hours per day of local programming to be aired on the translator, with time distribution of the local programming at the translator operator's discretion with programming criteria that falls into the current criteria of locally originated programming for the LPFM service.** This would also allow local content on the non-commercial FM translators that, until now, were prohibited from specifically localizing their content. This is easily done with currently-available store-and-forward technology via FTP and/or satellite file transfer. It is quite unfair and arbitrary to allow displacement of FM translators when the vast majority of FM translator owners only want to serve the individual communities that their translators serve, but have been prohibited from "localizing" by the regulations that are supposed to favor it. The FM translator could air local public affairs programming, local church

services, music indigenous to a particular region, local and regional news broadcasts, & traffic reports, while still keeping the scope of its mission, to rebroadcast the primary station. Even with an LPFM priority, FM translators are a vast, potentially-local resource that is currently prohibited from serving a community locally. It would be a given that the LPFM lobby would be against this since it would be “competition” to them. In reality, it would be “competitive localism”.

6. **The FCC should adopt a responsible regional network plan that allows for alternative feeding of FM translators in the non-reserved band while making the network serve the local and regional communities.** About three years ago, there was a joint rulemaking proceeding (RM-10609) filed by Creative Educational Media Foundation, Positive Alternative Radio and CSN International regarding the alternative (satellite, microwave, phone/data lines, etc.) feeding of FM translators in the non-reserved band. This joint rulemaking proceeding, RM-10609, was placed for inquiry by the FCC on or about June 17, 2002 in which REC Networks and the LPFM lobby understandably objected. However, in later comments, NPR and REC networks comments generally agreed that if the FCC was going to change the rules regarding the alternative feeding of non-reserved band FM translators, that there should be some basic distance threshold standard in which this is allowed. The NTA (National Translator Association) indicated in their comments that, not only should these regulations be revisited, but also that a significant regulatory overhaul of the FM translator service is due. The

comments of NPR and NTA can be found on the FCC Electronic Comment Filing System under RM-10609. Since this matter is before the FCC now in the form of a rulemaking, it would be prudent for the FCC to address these matters expeditiously as they affect potential localism issues and would allow FM translators to more reliably serve their respective local communities with signals of better quality.

7. **Before the FCC considers allowing LPFM stations to displace any FM translator, the FCC should make significant amendments and updates to current FM translator regulation.** I agree with the NTA comments in RM-10609 regarding the need for translator technical regulatory overhaul. Not doing so will create a large public outcry and, perhaps, long legal battles related to the subject. Proportionately, the number of pre-existing outlets that would be potentially displaced would be similar to the number of outlets that Clear Channel currently owns. If the displacement of large numbers of FM translators happened in a single filing window (or several closely spaced filing windows), there would be a massive public outcry for the existing programming services that would be displaced.
8. **In any possible FM translator displacement by an LPFM, it would be incumbent upon the FCC to waive the co-channel or 1st, 2nd, 3rd adjacent channel minor-change rule provision to allow for the FM translator to select any FM broadcast channel that would comply with the technical rules in which to locate, given only the petition-to-deny “minor-change”**

process. This may preserve the public interest of FM translators while preventing a public outcry in the subject.

9. **The FCC should consider allowing all non-commercial FM translators to convert to a resurrected “Class D” radio service regardless of ownership restrictions.** The regulations are already in place for this service with significant precedent and ONLY a ban on new service would need to be lifted in order to facilitate this. This would be an immediate win-win for localism as the local origination prospect could be immediately available to millions of people in hundreds of outlying communities where the existing translators are serving.
10. **Third-adjacent-channel protections for FM translators 100 watts and below should be immediately dropped, based on the findings in the Mitre Report.** This is a must for the survival of FM translators regardless of any priority given to LPFM.
11. **A declaratory ruling should immediately be issued actually defining and clarifying the term “locally produced” programming in the context of an LPFM station that is part of the mandatory 8 hour-per-day local origination requirement.** A local announcer “voice tracking” a shift where the musical content is actually recorded and produced elsewhere seems to be acceptable, but the importing of preaching or school-teaching that was recorded elsewhere and/or “duplicated” and customized in the studio, does not appear to be acceptable. Every reputable communications attorney that I have spoken with on the subject seems to have a different interpretation of this very

non-specific regulation. They are quick to point out that the LPFM rules are, for the most part, “legally untested” or legally unchallenged”. Many LPFM owners are confused about what is considered local content. This is counter to localism.

12. **LPFM renewal, LPFM station ownership and LPFM license transfer regulation should be amended.** The FCC should not propose the upgrade of a permanent LPFM priority service to the public without a formal renewal process to determine whether the former licensee would actually better serve the public interest than new applicants for the same frequency.
13. **The FCC should provide absolute protection for any FM translator against a new or proposed LPFM station where the originating full-service station is less than 300 km away from the given translator regardless of the circumstance.** The reason for this is that an existing NPR, public and/or educational broadcaster who is likely to be listening to the needs of the communities that it serves, is also likely to be well-resourced and better able to do so, thus better serving the public interest than replacing the content with another service that may not have resources to provide adequate, quality local service.
14. **Require a form of radio “must-carry” of “local” radio stations, LPFM and full-service, as mandatory on local cable radio systems, DBS audio, and/or any satellite radio programmer (XM or Sirius) that would ever propose carrying “local” programming of any type to a particular community.** This provide the proper resources to the localism idea for local

radio communities as well as fairly distribute diverse programming over the broadcast and subscription services that the FCC regulates.

15. **Adopt the HD Radio – IBOC, multicast system proposed by NPR.** This would significantly increase the public diversity and localism in broadcasting by doubling (or more) the number of FM band audio streams in a given area.
16. **Any action or permanence to the LPFM service should be tabled until the detrimental impact to IBOC and “digital only” stations from interfering LPFM’s can be studied more thoroughly and officially.** There is a massive implementation of IBOC (HD Radio) currently underway in the full-service FM broadcasting world where the signals will have a bandwidth and reception mask which is outside of the RF mask that was originally established as the basis for the protection of all full-service FM and LPFM regulations. It is even in this respect that the Mitre study is flawed as it completely fails to take into account potential interference to received IBOC – HD Radio digital carrier signals.
17. **If LPFM’s are to be allowed any type of priority status, they should be subject to all regulations that are in the public interest such as FULL EAS compliance, main studio staffing presence, and Public Inspection File maintenance.** The same responsibility exists to serve the public interest in each case whether the broadcaster is full-service or Low Power FM. This would be counter to some of the original intent of the LPFM service.
18. **In order to promote localism, in markets where the market is saturated with a particularly one-sided ownership interest, the FCC may consider**

an ownership threshold. allowing the ownership of additional stations only to occur with the condition that the full-power station comply with unique localism standards similar to those imposed on the LPFM service.

- 19. In no circumstances should “fill-in” or FM Booster stations be ever allowed to be displaced by any LPFM station.** These types of stations are critical to commercial and non-commercial full-service radio stations supplementing their coverage within their protected contour.
- 20. The FCC should immediately allow for negotiated interference proceedings to be resurrected where assured local and public interests would be served as a basic criteria for grant.** This would also be a win-win for localism as LPFM, translators and full-service could agree on station placement.
- 21. The FCC can do more to adopt a localism framework merely by changing some of the current internal policy that is used to interpret some existing regulations.** Some rule changes are helpful, but years of policy interpretation and legal precedent sometimes run counter to the public interest.

Many of the suggestions in this pleading are intended to incite more study during future, more-specific rulemaking proceedings for the intended service and specific regulatory category that would be affected. I respectfully request that these comments be carefully considered in this proceeding, with the FCC and particularly the Media Bureau staff taking note of the ideas that would be in the public interest

to adopt either by a change in staff policy and/or interpretation or direct regulatory change via rulemaking proceedings.

Sincerely,

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